



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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October 14th, 1998

Minutes of the October 14th, 1998, meeting of the Commission on Governmental Ethics and Election Practices held in Room 120, State Office Building, Augusta, Maine.

Present: Chairman Peter B. Webster; Members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, and Merle R. Nelson; Director William C. Hain, III; Counsel Phyllis Gardiner; and Commission Assistant Melissa Caron.

Chairman Webster called the meeting to order at 9:00 a.m.

In keeping with the Commission's practice of addressing agenda items out of scheduled sequence so as to accommodate members of the public who may be present and have requested a Commission determination of their respective issues, the following agenda items were considered:

Agenda Item #8A: Late Lobbyist Disclosure Report Filing:

Bruce Gerrity, Esq., of Preti, Flaherty, Beliveau & Pachios, LLC, appeared on behalf of Ann R. Robinson, Esq., and the firm. Attorney Gerrity stated that the circumstances involving the late lobbyist reports were unusual and requested that the penalty be reconsidered. He acknowledged the firm's responsibility for the late filing, but requested consideration of the unusual circumstances surrounding the late submission. He informed the Commission that the person trained to handle the reports was capable, but that the untimely death of her father in a car crash resulted in the reports being filed one day late. Mr. Gerrity asked the Commission to consider waiving the penalties, suggested that the statutory penalty of \$3600.00 (total) was grossly out of proportion to the seriousness of the offense (no substantive information was reported), and requested a significant reduction. He informed the Commission that prior filings had not been chronically late. Mr. Hain provided details of the firm's filing history and recommended a \$700.00 penalty, \$100.00 for each lobbyist who submitted a late report under the single firm filing. Mr. Mackenzie moved and Judge Henry seconded the staff recommendation to assess a penalty of \$100 per lobbyist, which motion was unanimously approved.

Agenda Item #9A: Complaints:

Mr. John R. Hanson, Chairman of the Penobscot County Democratic Committee, addressed the Commission on behalf of that Committee. He stated that he had originally raised the issue of the failure of the Old Town Republican Committee's apparent failure to file disclosure reports in

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order to learn what his candidates were up against. He indicated that he had copied the Democratic Committee Chairman, but that he could not find out who the Chairman or Treasurer of the Old Town Republican Committee are. He asked rhetorically what good is the law if one can be ignorant (unaware) of it or ignore it? Mr. Hanson indicated that he had verified information in his report letter by reference to the reports of the individual candidates who received contributions from the Old Town Committee on file with the Ethics Commission.

Counsel Gardiner advised that the Commission could require the Old Town Committee to provide the requested information before the election. Judge Henry suggested that the matter could be referred to the Attorney General for appropriate action contingent upon submission of the required information by a stated deadline. The Members also discussed the difference between a civil penalty and a criminal fine, and whether the local District Attorney or the Attorney General's office should take any action. Counsel Gardiner indicated that she would speak to District Attorney Almy about the letter he had written and the Commission's action. Mr. Mackenzie moved and Judge Henry seconded to have the Director communicate to the Old Town Republican Committee that it must respond to the Commission's previous inquiries not later than the close of business on Wednesday, October 21, 1998; and to table the Commission's consideration of any penalty until the November Commission meeting. The motion was unanimously approved. The recommendation was also made to send a copy of the letter from District Attorney Almy to the Old Town Republican Committee. Mr. Hanson expressed his appreciation for the Commission's action, indicating his gratitude for receiving any information that the Commission's inquiry to the Old Town Committee may produce.

Thereafter, the Commission returned to consideration of the agenda in published order.

The minutes of the September 9th, 1998 meeting were approved as presented.

Agenda Item #2: Outstanding Assessments and Penalties:

Copy fees: Mrs. Nelson expressed concern about the method of collecting copying fees that has resulted in unpaid, past due invoices for copying fees. Mr. Hain explained the newly instituted policy for permitting customers to be billed for copying charges. Henceforth, customers with a proven record of timely payment when billed may continue to be billed. Customers with overdue invoices must pay in advance until all overdue payments have been made. Telephonic requests for copies will be required to remit payment in advance if the estimated copying fee exceeds \$10.00. Copies will be provided without advance payment and the customer may be billed if the cost is less than \$10.00. Subsequent requests will not be filled without payment in advance for any customers with pending overdue invoices. The Commission staff will be responsible for maintaining a list of outstanding invoices and periodically advising the Members.

Unpaid penalties: A suggestion was made to consider permitting use of credit cards to pay penalties and applying interest to overdue amounts. Use of credit cards would not be administratively feasible and no statutory authority exists to assess interest charges for unpaid penalties. Counsel Gardiner stated her position that violators with the largest pending penalties should be of greatest concern. She will review the file of each case before filing complaints for



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collection of unpaid penalties. She advised that in the future the Attorney General's office will initiate collection action with a follow-up letter after the second reminder letter from the Ethics Commission. The view was expressed that the problem may not be as great as suggested by the media because the backlog is not disproportionate to the total number and amount of penalties collected. An efficient collection system will be implemented to deal with the present backlog. The statute makes the Secretary of State's office a part of the administrative collection process. Court action will result in those cases that warrant after administrative efforts to collect a penalty have proven unsuccessful. Counsel Gardiner and Mr. Hain will update Commission members on this matter quarterly.

Agenda Item #3: Libra Foundation Grant:

Mr. Hain informed Members that the Commission's grant application to the Libra Foundation for the electronic filing project will not be considered until December.

Agenda Item #4: Electronic Filing System:

Mr. Hain reported that on September 29th, 1998, Governor King approved the Financial Order to increase the allotment from the dedicated lobbyist registration fee account by \$175,000 to fund the development of the electronic filing project. Consequently, Chairman Webster suggested that the grant application to the Libra Foundation be supplemented to inform the Foundation Trustees of the Governor's action and the availability to the Commission of the new funds. Commission members agreed that the Commission should not withdraw its application for the Libra grant, but rather to supplement the original application with the new information. Mr. Hain indicated that it is his desire to have requests for proposals for development of an electronic filing system published before Thanksgiving, but that will depend upon problems that may be encountered in their preparation.

Agenda Item #5: Budget Document Explanation:

Mr. Hain presented the memorandum that had been prepared to explain the current state of the Commission's budget in amplification of the budget documents that previously had been distributed. He explained the request to employ two additional people, an auditor and an accountant, and account adjustments that were made to reflect payment of personnel costs from the appropriate accounts for the Lobbyist Registrar and the Commission Assistant positions.

Agenda Item #6: Clean Election Act Regulation Status:

The Attorney General's Office is still reviewing the draft regulations for form and legality. After that review is completed, the regulations will be sent to the Secretary of State's Administrative Procedure Office. The regulations will become effective no less than five (5) days (or any date thereafter that the Commission may specify) after the rule has been "accepted for filing" by the APA Office.



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Agenda Item #7: Gift Issue:

Mr. Hain briefed Members on the history of the Commission's consideration of the gift issue, the most recent example of which being a discussion in 1996 that was referred to the Attorney General's Office for resolution. No response thereto has been forthcoming. A suggestion was made to develop an informational document based on the draft "gift issue" document prepared by Mr. Hain, with specific examples regarding acceptance of gifts. Examples such as the present "trip letter" might be developed to highlight specific examples of when the requirements of the law are satisfied and when they are not. Members were reminded that the Ethics Commission does not have authority to enforce legislative ethics laws, but only to report the Commission's findings of facts and opinions to the appropriate legislative house for action. The suggestion was made to use the opportunity of the biennial pre-legislative conference ethics seminar to communicate examples of ethics problems to the Legislators. Chuck Dow of the Speaker's Office requested to address the Commission and stated that the problem of gift acceptance had been included in the Report of the Commission to the Joint Standing Committee on Legal and Veterans Affairs in Fall 1997, which he had assisted Former Director Marilyn Canavan to prepare. He suggested that the Report may offer a starting point for resolving the matter. He also stated that questions about trips as gifts routinely are handled by the Legislative Leadership staff.

Agenda Item #9B: Complaint against Sheriff Barry A. DeLong:

Members reviewed the correspondence previously distributed. Thereafter, Mr. Mackenzie moved and Mrs. Nelson seconded that the matter be, and it was unanimously, dismissed, based on the staff recommendation.

Chairman Webster announced a 10 minute recess at 10:50.

Agenda Item #9C: Complaint against Robert E. Stanwood:

Members reviewed the correspondence previously distributed. Thereafter, Judge Henry moved and Mr. Mackenzie seconded that the matter be, and it was unanimously, dismissed, based on the staff recommendation.

Agenda Item #10: Governor's Office Request:

Commission Members unanimously approved Mr. Hain's request for authority to sign the draft letter that informed Hallmark Cards, Inc., that the Company's Immunization Greeting Card Program does not constitute "lobbying" under State law. The question arose whether the program would be ongoing, the answer to which was unknown. The suggestion was made that these cards not be sent until after the election.



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Agenda Item #11A: Town of Falmouth Sign Issue:

Informational item only since the problem of the placement of political signs apparently had been resolved.

Agenda Item #11B: COGEL Conference Report:

Mr. Hain reported that one of the primary topics of discussion at the annual COGEL conference was electronic filing. Chairman Webster requested verification that next year's COGEL conference will be held in Providence, Rhode Island, and suggested the possibility of Commission members attending if funds permit.

Agenda Item #11C: Executive Session:

Mr. Mackenzie moved and Mrs. Cronkhite seconded, and it was unanimously voted, to enter into executive session to consider the status of the pending lawsuit challenging lobbyist registration fees. At the conclusion of the discussion, Mr. Mackenzie moved and Mrs. Nelson seconded, and it was unanimously voted, to go out of executive session.

Chairman Webster reminded Members that the November meeting normally scheduled for Wednesday, November 11th, has been rescheduled to Monday, November 16th, 1998, because of the Veterans Day holiday.

On motion and unanimous agreement, the Commission adjourned at 11:45 a.m.

Respectfully submitted,

William C. Hain, III
Executive Director